

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:

RICHARD M. OSBORNE,

Debtor.

Case No. 17-17361-aih

Chapter 7

Judge Arthur I. Harris

**FIRST NATIONAL BANK OF PENNSYLVANIA’S LIMITED RESPONSE TO
THE MOTION OF THE UNITED STATES TRUSTEE FOR ENTRY OF AN
ORDER CONVERTING CASE TO A CHAPTER 7**

Now comes First National Bank of Pennsylvania (“FNBPA”), by and through its undersigned counsel, and hereby responds to the *Motion of the United States Trustee for Entry of an Order Converting Case to a Chapter 7* [Docket No. 439] (the “Motion to Convert”). In support, FNBPA states as follows:

In general, FNBPA does not object to the relief requested by the United States Trustee (the “UST”) in the Motion to Convert. However, on December 11, 2018, FNBPA filed a *Motion to Appoint a Chapter 11 Trustee* [Docket No. 309] (the “Trustee Motion”), and an evidentiary hearing to consider the Trustee Motion currently is scheduled to take place on July 3, 2019. In the Trustee Motion, FNBPA sets forth a number of reasons why it believes that cause exists for the appointment of a chapter 11 trustee and/or that the appointment of a trustee is in the best interests of creditors. Some of those reasons include (among other things) the Debtor’s failure to disclose certain assets and transfers on his Schedules of Assets and Liabilities and Statement of Financial Affairs, the Debtor’s failure to keep corporate formalities between the various entities that he owns and his commingling of funds, the Debtor’s attempt to waive his automatic stay to purchase estate property at sheriff’s sale, and the Debtor’s acrimony toward creditors.

“The point of bankruptcy is to marshal assets in a way that maximizes their value for the benefit, primarily, of creditors . . . When a debtor remains in possession of his businesses and properties in a chapter 11 case, he does so as a fiduciary for those creditors.” In re Futterman, 584 B.R. 609, 618-19 (Bankr. S.D.N.Y. 2018). As is more fully explained in the Trustee Motion, the Debtor in this case consistently has demonstrated that he is incapable of acting, or is unwilling to act, as a fiduciary for his creditors. In addition, this case has been pending for nearly 18 months and no disclosure statement or plan of reorganization has been filed. Nor does it appear that any disclosure statement or plan of reorganization will be filed in the foreseeable future.

The distinguishing factor between the appointment of a chapter 11 trustee and conversion of a case to chapter 7 is the expanded possibility of a chapter 11 trustee, using independent judgment and good management to direct the affairs of the estate, including any on-going business operations in order to maximize the recovery for the creditors and the estate. See, In re Sydnor, 431 B.R. 584 (Bankr. D. Md. 2010). Because it appears that the Debtor has some on-going business operations and that the Debtor has income and assets that could be utilized to potentially propose a plan of reorganization, the interests of creditors and the estate would better be served by the appointment of a chapter 11 trustee as opposed to conversion of the case to chapter 7.

Wherefore, based upon all of the foregoing, FNBPA requests the entry of an order appointing a chapter 11 trustee and for such other and further relief as is proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 30, 2019, true and correct copies of the *First National Bank of Pennsylvania's Limited Response to the Motion of the United States Trustee for Entry of an Order Converting Case to a Chapter 7* are being served via the Court's Electronic Case Filing System on these entities and individuals who are listed on the Court's Electronic Mail Notice List:

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